

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FACULTY RIGHTS COALITION,	§	
and WOLFGANG P. H. DE MIÑO,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION NO. H-04-2127
	§	
HOSSEIN SHAHROKHI,	§	
MOLLY WOODS, and	§	
ADOLFO SANTOS,	§	
<i>Defendants.</i>	§	

FIRST AMENDED COMPLAINT

TO THE HONORABLE LEE H. ROSENTHAL:

Now comes the FACULTY RIGHTS COALITION, by and through WOLFGANG P. HIRCZY DE MINO, who appears both in his individual and representative capacity, and for cause of action against Defendant HOSSEIN SHAHROKHI, MOLLY WOODS, and ADOLFO SANTOS, would show the following:

**I.
PRELIMINARY STATEMENT**

1.1 This is a civil rights action under 42 U.S.C. §1983 seeking declaratory, injunctive, and monetary relief. Plaintiffs sue on behalf of part-time faculty members (“adjunct faculty”) at the University of Houston–Downtown (“UHD”) to vindicate and protect their First Amendment rights to engage in political speech on campus both physically and virtually, engage in individual and collective advocacy, seek redress of grievances, and associate with each other for these purposes.

1.2 Plaintiffs complain of denial of equal protection with respect to their employment status and conditions of employment and seek equitable relief.

1.3 Plaintiff Wolfgang Hirczy de Mino, individually, complains of retaliation on account of his exercise of First Amendment rights, and seeks a determination of the constitutionality of Section 101.109 of the Texas Labor Code.

II. JURISDICTION AND VENUE

2.1 Federal question jurisdiction in this civil action is based on 42 U.S.C. §1983 of the Civil Rights Act, and on the First and Fourteenth Amendments of the U.S. Constitution.

2.2 This court has jurisdiction to adjudicate related state law claims brought under the Texas Open Records Act pursuant to the supplemental jurisdiction statute.

2.3 The occurrences and actions and/or omissions by the Defendants upon which this action is based occurred in Houston and thus within the area encompassed by the Southern District of Texas–Houston Division.

III. IDENTITY OF THE PLAINTIFFS, STANDING, AND CAPACITY

3.1 The individually named Plaintiff, WOLFGANG HIRCZY DE MINO, PH.D., (“the Named Plaintiff” hereinafter) is a resident of Texas and has standing to bring this suit as a student and current faculty member at the University of Houston-Downtown. The Named Plaintiff is a member of a learned profession, a member of the State Bar of

Texas and its Labor and Employment Law Section, and – for purposes of the Public Information Act - a member of the public. In bringing this action, he does not speak for the University or any of its components. The Named Plaintiff is a citizen of Texas but is not a citizen of the United States under federal immigration law.

3.2 The FACULTY RIGHTS COALITION (“FRC”) is an unincorporated association without a formal membership structure. FACULTY RIGHTS COALITION was registered as an assumed name by the Named Plaintiff in the Harris County Clerk’s Office in 2003. It currently operates as a sole proprietorship with unlimited liability.

IV. IDENTITY OF DEFENDANTS

4.1 Defendant HOSSEIN SHAHROKHI (“Shahrokhi”) is a public official herein sued for declaratory relief and nominal damages in his individual capacity, and for equitable, injunctive, and declaratory relief in his official capacity as Executive Director of Information Services at the University of Houston-Downtown (UHD), a component of the University of Houston, located at One Main Street, Houston, Texas 77002. The University of Houston is an agency of the State of Texas.

4.2 Shahrokhi is in charge of all information technology (IT) services and has managerial control over IT staff at the University of Houston-Downtown.

4.3 Shahrokhi has appeared by attorney and answered in this suit.

4.4 Defendant MOLLY WOODS (“Woods”) is a public official herein sued for declaratory relief and monetary damages in her individual capacity, and for equitable,

injunctive, and declaratory relief in her official capacity as Provost of the University of Houston-Downtown (UHD).

4.5 Woods is the University's chief academic officer responsible for faculty affairs.

4.6 Woods may be served with summons at her office at One Main Street, Houston, Texas 77002 if she does not waive service.

4.7 Defendant ADOLFO SANTOS ("Santos") is a public official herein sued for declaratory relief and nominal damages in his individual capacity, and for equitable, injunctive and declaratory relief in his official capacity as Coordinator for Political Science and as Assistant Administrative Chair of the Department of Social Sciences at UHD.

4.8 Santos is responsible for making adjunct faculty teaching assignments.

4.9 Santos may be served with summons at his office at One Main Street, Houston, Texas 77002 if he does not waive service.

4.10 The Defendants were acting within the course and scope of their employment and under color of state law at all times relevant to this suit

4.11 Because Defendants in this suit are public officials sued in their official capacity, the State of Texas and its attorney general, who represents the Defendants, are on notice of the constitutional challenges to Texas statutes herein and need not be served separately.

V.
STATEMENT OF FACTS

5.1 The University of Houston--Downtown is a four-year teaching university within the University of Houston System. Unlike its counterpart on the central campus, it is not a research university. Classes are taught by two classes of faculty: tenure & tenure-track (T/TT) and adjuncts.

5.2 Adjuncts are defined as faculty members hired to teach less than full time or appointed to teach full time only for one semester. There are close to 300 adjuncts at UHD. The university and the students heavily depend on them. The overall T/TT coverage ratio is 45.6%. Only 35% of lower division courses are taught by tenure or tenure-track faculty.

5.3 Although achievement of its core mission critically depends on adjunct faculty, the latter have no representation in shared governance, cannot vote in Faculty Senate elections, and have no opportunity to participate in the making of decision and policies that affect them and the students they teach.

5.4 Adjuncts are paid significantly less than the pro rata amount for full-time faculty for teaching the same courses. Even though adjuncts hold advanced degrees, their compensation is lower than that of elementary school teachers in Houston Independent School District. (on a FTE 10-month comparison basis).

5.5 In 2003, there were 65 adjuncts in the Department of Social Sciences, the largest department. They accounted for 62% of the student credit hours (SCHs) generated

in that department. They shared a single room with one phone line to serve the needs of the 4,288 students enrolled in the 128 (of 227) sections they taught. Adjunct faculty are required to hold office hours, but have no private offices, even on a time-share basis. As faculty are also required to comply with FERPA, a federal law mandating confidentiality for grades and other student records.

5.6 UHD promotes itself as a “full-service university” where classes are small and where professors are accessible and know students by name. Adjuncts are required to publish the phone number of the adjunct faculty room on their syllabi to create the appearance of accessibility. Per department policy the 65 adjuncts in the Social Science department are instructed to regularly check whether any of their (4,288) students left a message in the voice mail box and not to delete any message left for any of their (64) colleagues. Just prior the start of the Fall 2004 semester, the voice mailbox was full and no message could be left. At the adjunct faculty orientation session one attendee remarked that the voice mail had not worked for the past two years.

5.7 Adjuncts are encouraged to give out their private email addresses and cell phone numbers at their own expense.

5.8 Most Adjuncts are given only two courses to teach in order to keep them ineligible for group medical insurance to which the University would otherwise have to contribute pursuant to state law. To facilitate enforcement of the policy, adjuncts must notify their supervisors if they wish to teach a third course in another department. If Adjuncts obtain a part-time assignment at another campus of the UH system, their

combined FTE equivalencies are not used for benefits-eligibility purposes even though they receive a single W-2 from the University which reports their systemwide income for the prior tax year.

5.9 Both full-time and adjunct faculty members are assigned @uhd.edu e-mail accounts. Faculty are instructed to place their e-mail address on their syllabi, and to use them to communicate with their students. Both full-time and adjunct faculty members are required to report course grades at the end of the semester by entering them on a secure UHD web site accessed through their UHD network accounts. The data is confidential under FERPA.

5.10 UHD also maintains an e-mail distribution list (the functional equivalent of a listserv), which allows members of the university community (other than students) to send communications to all other subscribers simultaneously, rather than just individually. This e-mail distribution facility is designated “DT_All_Users” and accessed actively and passively through the UHD-provided Outlook™ e-mail accounts.

5.11 In the Spring 2004 semester the Named Plaintiff and another adjunct endeavored to complain publicly about pay and working conditions, and other matters of public concern, using their UHD-provided email accounts and the DT_All_Users distribution facility.

5.12 Defendant Shahrokhi responded by censoring additional messages submitted for distribution through the “DT_All_Users” facility.

5.13 The Named Plaintiff sought to distribute individual messages critical of the

university's administration and an *Adjuncts' Petition* through the email system, but was thwarted by Defendant Shahrokhi in this endeavor.

5.14 The Named Plaintiff also informed his supervisor, Adolfo Santos, that he wanted to launch an effort to collectively pursue the betterment of the adjuncts' working conditions. UH administrators referred him the Texas Labor Code and a UH system policy purporting to prohibit unionization at UH. (SAM 02.A.32).

5.15 When the controversy became more heated, Defendants terminated the Adjuncts' access to their email account altogether without closing the accounts themselves. The Adjuncts were thus prevented from reading their email messages, which continued to accumulate in their in-boxes, and from exercising their First Amendment rights by sending email to each other and to all others who have email accounts on the university's system. The University also removed the names and email addresses of adjunct faculty members from its web site. It resisted release of the names and addresses of all adjuncts after the Plaintiffs had requested it under the Public Information Act.

5.16 The instant suit was filed on May 28, 2004 to secure the Adjunct's access to their email accounts and full functionality thereof, including the ability to distribute email messages to all other faculty and staff accounts.

5.17 On August 5, 2004 this Court heard evidence but declined to enter a preliminary injunction requiring Defendant Shahrokhi to restore email access. The Court expected that the Adjuncts would have their email access restored at the beginning of the

Fall semester later that month.

5.18 At the injunction hearing, the Named Plaintiff argued, inter alia, that T/TT faculty do not have their email access interrupted during the summer regardless of whether they teach summer school, that regular faculty have 10-month contracts that do not include the summer months, and that medical insurance remained in effect for himself and his son during the summer even though he had no teaching assignment.

5.19 At the same hearing Provost Molly Woods testified that the Named Plaintiff's continuation of medical insurance coverage in the summer was an act of kindness by the University. Woods did not mention the existence of a medical support order issued by a family court requiring the University to cover the Named Plaintiff's son as long as the Named Plaintiff was eligible for coverage himself.

5.20 Defendants then converted the Named Plaintiff's position to a non-benefits-eligible position, terminated his active status in the Teacher Retirement System and reduced his net pay for the fall semester to \$374.39 per month (for teaching two courses at 40% FTE).

5.21 At the start of the Fall 2004 semester the Defendants continued to deny the Named Plaintiff access to his university-assigned email account although it continued to accumulate incoming messages.

5.22 The Named Plaintiff published his private email address on his course syllabi. He later discovered that messages sent from this private email account to addressees on the University's system were intercepted as "spam" by the University's

spam filter.

VI.
FIRST CAUSE OF ACTION
VIOLATION OF THE ADJUNCTS' FIRST AMENDMENT RIGHTS

6.1 The First Amendment of the United States Constitution provides that “[c]ongress shall make no law ... abridging the freedom of speech. “ U.S. CONST. amend. The Fourteenth Amendment makes this limitation applicable to the states, and their agents and agencies. *City of Ladue v. Gilleo*, 512 U.S. 43, 45 n.1, 129 L. Ed. 2d 36, 114 S.Ct. 2038 (1994).

6.2 The First Amendment protects speech by employees commenting as citizens on a matter of public concern. *Connick v. Myers*, 461 U.S. 138, 147, 103 S. Ct. 1684, 75 L. Ed. 2d 708, 720 (1983). The basis for according constitutional protection to private speech on the part of employees of a governmental agency is to allow the employees to participate freely in public affairs and avoid chilling the use of speech that the employer might find objectionable. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).

6.3 Plaintiffs’ status as nontenured faculty does not deprive them of their First Amendment rights. *Perry v. Sindermann*, 408 U.S. 593, 597-98, 33 L.Ed. 2d 570, 92 S.Ct. 2694 (1972). Nor may public employees be forced to give up their First Amendment rights as a condition of public employment. *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968).

6.4 In voicing criticism of university administrators, Plaintiffs spoke on (and attempted to speak out on) matters of public concern. In attempting to distribute the Adjuncts' Petition through UHD's virtual forum, the Plaintiffs sought to make the university community aware of a variety of issues of concern pertaining to university governance, sought to engender public discussion of policies and decisions affecting many faculty members, and attempted to take the first steps toward their resolution. In so doing, the Plaintiffs sought to exercise their free speech rights as well as their right to seek redress of grievances.

6.5 To the extent the Named Plaintiff and other adjuncts sought to communicate with similarly situated colleagues through the DT_All_Users e-mail distribution list, and thereby sought to induce them to pursue a resolution of their shared concerns jointly, they also exercised their right to freely associate to advocate their beliefs and seek an improvement of their working conditions.

6.6 The Plaintiffs' exercise of their right to speak on matters of concern to the university community in its virtual (electronic) forum is neither disruptive, nor does it in any way distract from the efficiency of the performance of the University's mission. Subscribers can read, or chose not to read, e-mailed messages at their leisure. The same forum is routinely used by other members of the university community and by administrators to post messages on private matters, on matters of concern to the university and its employees and students, and on matters relevant to list subscribers as citizens of communities beyond campus of which they are members.

6.7 By impeding and restricting the Plaintiffs' access to, and use of, UHD's e-mail system and associated DT_All_Users e-mail distribution list, the Defendant imposed a prior restraint upon the Plaintiffs' First Amendment rights to free expression in a public forum created by UHD, and serving the UHD community, and thus deprived the Plaintiffs of federally protected constitutional rights.

6.8 By obstructing the dissemination of facts and opinions on the basis of their content the Defendant engaged in impermissible viewpoint-based regulation of political expression in a public forum on campus, or alternatively a limited public forum, in violation of the Plaintiffs' federal constitutional rights.

6.9 A plaintiff's suit alleging a federal law violation must be brought against individual persons in their official capacities as agents of the state, and the relief sought must be declaratory or injunctive in nature and prospective in effect." *Aguilar v. Texas Dep't of Criminal Justice*, 160 F.3d 1052, 1054 (5th Cir. 1998). Such relief is not barred by the Eleventh Amendment. *Ex parte Young*, 209 U.S. 123, 52 L. Ed. 714, 28 S. Ct. 441 (1908). Plaintiffs satisfy this requirement by seeking relief against individually named Defendant Shahrokhi in his official capacity, rather than naming the University of Houston itself as a defendant.

6.10 Wherefore the Plaintiffs ask the Court to declare that the selective restriction on posting of messages to DT_All_Users e-mail distribution list is unconstitutional, and enjoin the Defendant from impeding or denying the Plaintiffs access to their UHD assigned e-mail accounts and ability to use the DT_All_Users e-mail

distribution list to post and receive messages.

**VII.
SECOND CAUSE OF ACTION
DENIAL OF EQUAL PROTECTION IN PAY
(EQUAL PAY FOR EQUAL WORK)**

7. The adjunct faculty are being paid significantly less than the pro-rata amount of the pay of full-time faculty for teaching the same courses in violation of their right to the equal protection of the law.

**VIII.
THIRD CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION IN
BENEFITS**

8. The adjunct faculty are denied eligibility for benefits and pro-rata employer contribution to medical insurance in violation of their right to the equal protection of the law.

**IX.
FOURTH CAUSE OF ACTION: DENIAL OF FOURTEENTH AMENDMENT
RIGHTS WITH RESPECT TO UNIVERSITY GOVERNANCE**

9. The adjunct faculty are denied the opportunity to participate in shared governance and formulation, recommendation, and making of academic and other university policies in violation of their right to due process and equal protection of the laws.

**X.
FIFTH CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION
IN TEACHING SUPPORT**

10. The adjunct faculty are denied resources and support essential to their teaching such as telephone, voice mail, IT services, and office space in violation of their right to the equal protection of the law.

XI.
**SIXTH CAUSE OF ACTION: DENIAL OF EQUAL PROTECTION IN
PROFESSIONAL AND SERVICE OPPORTUNITIES, RECOGNITION, AND
COMPENSATION THEREFOR**

11. The adjunct faculty are denied the opportunity to engage in collegial events and activities, committee work, and service activities on campus in violation of their right to equal protection of the law. They are further denied eligibility for teaching awards and external funding opportunities, compensation and credit for service activities, and recognition and publicity for research, publications, creative activities, and service they produce or perform without compensation.

XII.
SEVENTH CAUSE OF ACTION: FIRST AMENDMENT RETALIATION

12.1 The Named Plaintiff's First Amendment rights to be free from retaliation for engaging in protected first-amendment activity, and to be free from suppression of protected speech by intimidation, were violated when after the preliminary injunction hearing the Defendants converted his position to a non-benefits-eligible position, reduced his FTE equivalency from 60% to 40%, terminated his active participant status in the Teacher's Retirement System, reduced his salary to net \$374.39 per month, continued to

deny him access to his university-assigned email account and intercepted email sent from his private account to members of the university community through its “spam” filter.

12.2 The Named Plaintiff seeks a declaration that his rights were violated, actual damages, reimbursement of the cost of medical insurance, reimbursement for the cost of obtaining or replacing the access, amenities, facilities, services, resources, and benefits denied to him, and reinstatement to a benefits-eligible position at equal or greater pay.

XIII.
**NINTH CAUSE OF ACTION: CONSTITUTIONALITY OF
LABOR CODE PROVISION PROHIBITING ALIENS FROM ENGAGING IN
LABOR UNION ACTIVITY**

13.1 Section 101.109 of the Texas Labor Code prohibits aliens from serving as labor union officials or labor union organizers. The individually named Plaintiff is a citizen of Texas, but a resident alien (noncitizen) under federal immigration law. Section 101.109 on its face involves a classification based on alienage that should be struck down as a violation of the Equal Protection Clause, which guarantees all persons, not just citizens, the equal protection of the laws.

XIV.
**EIGHTH CAUSE OF ACTION: CONSTITUTIONALITY OF UH POLICY
PROHIBITING COLLECTIVE BARGAINING**

14.1 UH System Administrative Memorandum (SAM) 02.A.32 purports to prohibit collective bargaining the University of Houston Downtown, a component of the University of Houston. Plaintiff request that the Court adjudicate as to whether this policy

is or is not in compliance with federal constitutional and statutory law so that Plaintiffs may have proper notice as to how to conform their conduct to the policy without risking discharge or other sanctions.

14.2 In the event that the Court declares the policy, or any aspect thereof, unconstitutional, Plaintiffs request that the Court enjoin its enforcement

**XV.
TENTH CAUSE OF ACTION: CONSTITUTIONALITY OF
LABOR CODE DEFINITION OF LABOR UNION
(VAGUENESS AND OVER-BREADTH CHALLENGE)**

15.1 The Texas Labor Code subjects “labor organizations” to regulation and defines “labor organization” as “any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions.” Plaintiffs aver that this definition is overly broad and vague, and unconstitutional under the First and Fourteenth Amendments in that it impermissibly restricts the exercise of First Amendment rights.

15.2 Should the scope of the definition, and the scope of the regulation it entails, be upheld as constitutional, Plaintiffs request a declaration as to whether the Faculty Senate is subject to such regulation under the Labor Code on account of its involvement in activities encompassed by the definition of “labor organization” and whether its existence and role in university governance conflicts with §617.002, which prohibits recognition of a labor organization as a bargaining agent of public employees.

15.3 Should the Court hold that the Faculty Senate is a “labor organization” for purposes of the Act, Plaintiffs aver that the Tex. Labor Code §617.002, which expressly prohibits collective bargaining by public employees, violates federal law and should be declared invalid and unenforceable.

XVI.
EIGHTH CAUSE OF ACTION: PENDANT STATE LAW CLAIM
PARTIAL DENIAL OF STATUTORY RIGHTS
UNDER THE TEXAS PUBLIC INFORMATION ACT

16.1 The Open Records Act [now Public Information Act] entitles the public to obtain access to information “collected, assembled, or maintained by a governmental body.” *Holmes v. Morales*, 924 S.W.2d 920, 922 (Tex. 1996); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152, 157 (Tex. App.–Austin 2001, no pet.)(quoting *Homes*); Tex. Gov’t Code Ann. §§ 552.001-.353.

16.2 Public information may not be withheld except as expressly provided by the Act. *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.3d 351, 356 (Tex. 2000); *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157.

16.3 On or about May 5, 2004 the Named Plaintiff requested the unit planning document for the Department of Social Sciences from Adolfo Santos. Santos did not claim any of the exceptions available under the Act. Nor did he request a letter ruling from the Open Records Division of the Texas Attorney General’s Office.

16.4 Public officials have a ministerial duty to act in accordance with the statutory obligations imposed upon their governmental unit by the Public Information

Act. Tex. Gov't Code Ann. §§ 552.001-.353.

16.5 Santos failed to release information subject to release under the Open Records Act. Santos, in his official capacity, and the University as a governmental unit subject to the Act failed to comply.

16.6 Because the requested information is available to regular faculty members, but not to Adjuncts, the denial of the information subject to release under the Public Information Act constitutes a denial of equal protection of the laws under the federal constitution, and thus provides an alternative basis for federal jurisdiction should the Court hold that the University and its officials enjoy Eleventh Amendment immunity with respect to remedies authorized by the Texas Public Information Act.

16.7 Plaintiffs request the Court to enjoin Defendant Santos from withholding the requested information and direct Santos to release the response information by a date certain should he not produce it voluntarily.

XVII. PRAYER FOR RELIEF

17.1 WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully request that the District Court declare that UHD's DT_All_Users e-mail distribution facility constitutes a public forum with respect to employees and administrators at UHD, and that Plaintiffs' right to engage in expressive and associational First Amendment activity in this "campus town hall" in the University's cyberspace was unlawfully interfered with by Shahrokhi and/or his agent(s). Plaintiffs ask for nominal damages on

this claim.

17.2 In the alternative, Plaintiffs request that the District Court declare that the DT_All_Users distribution list constitutes a non-public forum equal access to which was impermissibly denied to the Plaintiffs in a discriminatory fashion in connection with the Adjunct's second-class status and exclusion from shared governance and denial of voting rights. Plaintiffs ask the Court to find that the Defendant deprived Plaintiffs of their federal constitutional rights on account of the content of their speech (and intended speech) in violation of Plaintiffs' rights to seek a voice in the affairs of the university, representation with respect to shared governance, and redress of grievances.

17.3 Plaintiffs pray that the Court enjoin the violation of their First Amendment rights by Defendant Shahrokhi by issuing, upon trial of this matter, a permanent injunction prohibiting the Defendant, his servants, agents, and employees from obstructing, impeding, or interfering with, adjunct faculty members' right to access and use their e-mail accounts and the associated DT_All_Users e-mail distribution list for protected First Amendment activities.

17.4 Plaintiffs pray for a declaration of their rights to advocate on behalf of themselves with regard to their employment and request that the Court enjoin the enforcement of state laws and university policies determined to be invalid under federal law.

17.5 Plaintiffs pray for prospective injunctive relief requiring the Defendants to treat adjunct faculty equally and equitably compared to T/TT faculty, and provide pay and

benefits to them on a pro rata basis.

17.6 The Named Plaintiff prays for declaratory and monetary relief against the Defendants in the Defendants' individual capacity.

17.7 The Named Plaintiff prays for declaratory relief and equitable remedies in the form of reimbursement and reinstatement against Defendants Molly Woods and Adolfo Santos in their official capacities.

17.8 Plaintiffs pray that the Court issue an interlocutory order compelling Defendant Santos to perform the ministerial duty to release the information subject to release under the Open Records Act.

17.9 Plaintiffs pray for attorney's fees, paralegal and other litigation fees, reasonable expenses, and all recoverable costs of court.

Respectfully submitted on December 17, 2004.

By:

Wolfgang Hirczy de Miño
Texas Bar Card No. 32143
2038 ½ Lexington
Houston, Texas 77098
Tel.: (713) 806-8517
Fax: (713) 527-0391
E-mail: wolfh778@cs.com

COUNSEL FOR PLAINTIFFS

Certificate of Service

I hereby certify that on December 17, 2004 a true and correct copy of this document is being / was served upon Defendant's attorney of record, as shown below, by the following method:

U.S. mail facsimile transmission

Lars Hagen
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Austin, Texas 78701
(512) 463-2120
(512) 320-0667 FAX

Wolfgang Hirczy de Miño